IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5586

PAUL J. BELL, JR.,

Petitioner,

v.

R. H. BURSON, DIRECTOR, GEORGIA DEPARTMENT OF PUBLIC SAFETY,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

PETITIONER'S BRIEF

HOWARD MOORE, JR.
ELIZABETH ROEDIGER RINDSKOPF
PETER E. RINDSKOPF

Suite 1154
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303

WILLIAM H. TRAYLOR

551 Forrest Road, N.E.
Atlanta, Georgia 30312

Attorneys for Petitioner

Washington, D. C. · THIEL PRESS · 202 · 393-0875

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OPINION BELOW

The opinion below has been reported *sub. nom, Burson v. Bell,* 121 Ga. App. 418, 174 S.E. 2d 235 (1970).

JURISDICTION

The judgment of the Court of Appeals of the State of Georgia was entered on March 4, 1970; a motion for rehearing was denied on March 17, 1970. On April 15, 1970, a Petition for Writ of Certiorari to the Court of Appeals of Georgia was filed in the Georgia Supreme Court; that peti-

tion was denied without opinion on April 23, 1970. Thereafter petitioner filed his Application for Stay of Remittitur with the Court of Appeals on April 29, 1970; an order granting stay pending this petition for certiorari in the United States Supreme Court was granted by the Court of Appeals on May 26, 1970. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), petitioner having claimed violation of his rights under the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the constitutionality of portions of the Georgia Motor Vehicle Safety Responsibility Act, Ga. Code Ann. 92A-601, *et. seq.*, which are set forth in an appendix *infra* pp. la ff.

This action also involves the Fourteenth Amendment to the Constitutional of the United States.

QUESTIONS PRESENTED

1. Whether Ga. Code Ann. 92A-601, *et seq.*, the Georgia Motor Vehicle Safety Responsibility Act [hereinafter referred to as "Act"], violates the due process clause of the Fourteenth Amendment to the United States Constitution, by failing to provide an uninsured person involved in certain automobile accidents hearings on the question of liability prior or subsequent to the suspension of his driver's license, motor vehicle registration, and tag?

STATEMENT

A. INITIATION OF THIS LITIGATION

Petitioner, a white Methodist minister to a rural Georgia community, is a licensed Georgia driver. On November 24, 1968, he was involved in an accident in which a juvenile cyclist was injured. Petitioner was the owner and driver of

the sole car involved in this accident. A report of the accident was duly filed with the Georgia Department of Public Safety [Appendix, p. 4]. Thereafter, affidavits claiming bodily injury in the amount of $5,000.00 were filed with the Respondent Director of Public Safety on behalf of the injured child [Appendix, pp. 6 ff.] Upon receipt thereof, Director Burson issued an "Order of Suspension" on April 10, 1969 [Appendix, p. 9] notifying petitioner that suspension of his driver's license, automobile registration certificate and tag would become effective on May 10, 1969, unless petitioner complied with the Safety Responsibility Act. Compliance required petitioner to: (1) submit a notarized release from all persons suffering personal injury or property damage of $100.00 or more as a result of the accident; *or* (2) file proof of insurance coverage with the Department of Public Safety; *or* (3) post bond in the entire amount of damages claimed, *i.e.*, $5,000.00. The notice stated further that failure to obtain such a release of liability prior to the suspension date would necessitate the filing of proof of future financial responsibility for one year's period, as well as a $10.00 fee for the restoration of driver's license, motor vehicle registration, and tag.

B. ADMINISTRATIVE PROCEDURE

Petitioner promptly requested [Appendix, p. 10] and on May 7, 1969 received, an administrative hearing before the Director of Public Safety, as provided by Ga. Code Ann. 92A-602. Petitioner's attempts to present evidence as to his non-liability at that hearing were denied as contrary to the provisions of the Act. Petitioner was required to comply with the original order of suspension by June 10, 1969 or to forfeit his driver's license, motor vehicle registration certificates and license tags for a three year period [Appendix, p. 12].

Petitioner appealed this administrative order to the Superior Court of Cook County, Georgia for a *de novo* hearing as allowed by Ga. Code Ann. 92A-602 [Appendix,

p. 13]. At this judicial hearing the court allowed petitioner to present evidence on his liability and found him free from any fault in the accident. This finding is reflected in the stipulation entered into by the parties for purposes of appeal [Appendix, p. 16]. On August 1, 1969, the Superior Court of Cook County entered its final order, stating in part:

> It is . . . ORDERED AND ADJUDGED that the petitioner's driver's license not be suspended. It is further ORDERED that when suit is filed against petitioner for the purpose of recovering damages for the injuries sustained by the child in the accident with petitioner that the Department of Public Safety suspend his license if he has not then complied with the Financial Responsibility Law. [Appendix, p. 15]

C. APPEAL TO THE GEORGIA COURT OF APPEALS

Thereafter the Director of Public Safety appealed the lower court's decision and order to the Court of Appeals of Georgia, enumerating as error the fact that the lower court had considered the question of fault and liability at its hearing, and had based its order on a finding of non-liability [Appendix, pp. 19, 20].

On March 4, 1970 the Georgia Court of Appeals entered its decision reversing the judgment of the Superior Court of Cook County. Its decision, states in part:

> When the above section of the Act [Ga. Code Ann. 92A-605] is applied to the facts stipulated by the parties and found by the lower court, suspension is required. "Fault" or "innocence" are completely irrelevant factors. The suspension requirement is mandatory and a license "may be re-instated only if the driver shows proof of financial responsibility as required by law, or it is shown that he comes within one of the exceptions of Ga. Code Ann. § 92A-605 (c) or § 92A-606." [Appendix, p. 25].

D. PROCEEDINGS SUBSEQUENT TO DECISION OF THE COURT OF APPEALS

Petition for discretionary certiorari was subsequently filed with the Supreme Court of Georgia and denied without opinion on April 23, 1970 [Appendix, p. 27]. A timely petition for certiorari was filed in this Court thereafter and granted by order of this Court dated December 21, 1970 [Appendix, p. 27]. Prior to granting review, this Court requested and received memoranda from the parties on the question of when and how the federal question was raised.

Although more than two years have elapsed since the accident commencing this litigation, petitioner has never been served with a complaint on behalf of the injured child.

SUMMARY OF ARGUMENT

Upon the request of an injured party, the Georgia Safety Responsibility Act operates to suspend the driver's license and tag of any person who cannot post bond in the full amount of damages claimed, *or* who either cannot or will not settle the claim. In so doing Georgia interferes with the important constitutionally protected rights of property, liberty and interstate travel. A state may abridge these valuable rights only with procedures that meet the constitutional demands of due process and only for valid state purposes. The hearing provided by the Georgia Act is constitutionally inadequate because it has been interpreted to preclude any consideration of fault or responsibility for accident damages. No valid state purpose is promoted by this constitutionally inadequate procedure. At best the Act provides a special advantage to potential creditors in recovering for unproved damage claims. The Act does not forward highway safety. Other states have interpreted their respective safety responsibility acts to require a hearing on liability before license suspension. Their experiences prove the feasibility of such a requirement. Due process demands that Georgia do the same if her Safety Responsibility Act is to be constitutional.

ARGUMENT

A. OPERATION OF THE ACT

The Georgia Motor Vehicle Safety Responsibility Act applies when an accident involving death, personal injury or property damage in excess of $100.00 occurs within Georgia. Any person involved in such an accident may, at his discretion, file an affidavit with the Department of Public Safety, alleging the amount of damage claimed without further proof [Form SR-57]. See, Appendix, p. 6. Upon receipt of this form, the Department automatically and without investigation issues a "Notice of Order of Suspension" [Form SR-8]. See, Appendix, p. 9. The Notice requires the driver and/or automobile owner addressed to comply with the Act or face suspension of his driver's license and motor vehicle registration and tag (hereinafter collectively referred to as "license"). Compliance is accomplished by doing one of the following: (1) submitting a notarized release from all persons suffering personal injury or property damage of $100.00 or more as a result of the accident [Ga. Code Ann. 92A-604(4)]; or (2) posting bond in the entire amount of damages claimed, here $5,000.00 [Ga. Code Ann. 92A-A-605(d)]; or (3) filing proof of insurance coverage with the Department [Ga. Code Ann. 92A-605(c)].

An uninsured motorist whose job requires a driver's license must either obtain a release or post bond in the full amount of damages claimed, for the Act provides no hardship exception.[1] The Act favors those seeking a release by giving the uninsured motorist two advantages: (1) if he settles before the suspension date, he avoids the need to prove future financial responsibility for one year [Ga. Code Ann. 92A-615.1]; and (2) he avoids the $10.00 restoration

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[1] See *Burson v. Johnson*, 118 Ga. App. 381, 163 S.E. 2d 857 (1968) where the Georgia Court of Appeals reversed a lower court order allowing a suspended license to be used for business purposes only.

fee required to gain the return of his license [Ga. Code Ann. 92A-615.2]. The uninsured motorist thus need not purchase costly non-cancellable liability insurance for one year as proof of financial responsibility.

The uninsured driver who believes that he is not responsible for his accident and its damages and who consequently does not want to settle, faces a dilemma. Unless he posts bond in the full amount of damages, he will undergo suspension for one year [Ga. Code Ann. 92A-607(2)] in order to preserve his right to defend against the damage claim in court.[2] After a year's time, the driver may regain his license only by showing that (1) no judgment has been entered against him with respect to the damages claimed, and (2) no action is currently pending against him.[3]

B. THE RIGHTS INVOLVED IN THIS LITIGATION ARE SIGNIFICANT

Petitioner is threatened with the suspension of his driver's license, registration and tag. This driver's license, motor vehicle registration and tag are significant parts of the liberty and property protected by the due process clause of Section 1 of the Fourteenth Amendment and may be abridged only by constitutionally appropriate procedures.

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[2]Although the Act has been amended to provide for a suspension of one year [Ga. Code Ann. 92A-607 (2), as amended by Ga. Laws 1969, pp. 819-821], at the time of Petitioner's accident suspension extended for a three year period. The question of whether this amendment will be retroactive, thereby applying to petitioner, is now awaiting decision before the Georgia Court of Appeals. See *Edwards v. Department of Public Safety*, No. 45837 (argued January 4, 1971) and *Department of Public Safety v. Dobson*, No. 45921 (argued January 13, 1971).

[3]If an action is pending against the motorist, his license and registration will remain suspended until judgment is rendered in the case [Ga. Code Ann. 92A-607 (3)].

The status of a driver's license as a right deserving of constitutional protections was first most clearly stated in *Wall v. King*, 206 F.2d 878 (1st Cir. 1953):

> We have no doubt that the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty" which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law. 206 F.2d at 882.

More recently the concept of liberty mentioned in *Wall, supra*, has been buttressed by the delineation of a separate and independent constitutional right of interstate travel and free movement. *United States v. Guest*, 383 U.S. 745 (1966); *Shapiro v. Thompson*, 394 U.S. 618 (1969). Unmentioned explicitly in the language of the Constitution, this right of interstate travel and free movement is nevertheless fundamental and basic to the Constitution, *Passenger Cases*, 7 How. 283 (1849); *United States v. Guest, supra; Shapiro v. Thompson, supra.* It is a separate and individual right, not simply an aspect of the "liberty" guaranteed by the due process clause of the Fourteenth Amendment.

In *Shapiro, supra*, this Court held that a state may not condition welfare benefits upon a year's residence within the state. The right of interstate travel was held so crucial that any infringement upon it "must be judged by the stricter standard of whether it promotes a *compelling* state interest," 394 U.S. at 638 (emphasis by the Court). More recently the reasoning in *Shapiro* has been applied by several three-judge district courts to state residency requirements for bar applicants. See *Keenan v. Board of Law Examiners*, 317 F. Supp. 1350 (E.D.N.C. 1970) and *Webster v. Wofford*, ___ F.Supp. ___ No. 14253 (N.D. Ga. December 31, 1970).

Suspension of petitioner's driver's license in the present case will not eliminate his right to travel. Other means of transportation than his own private vehicle will remain avail-

able to petitioner. But a complete prohibition on interstate travel is not necessary to the application of the "stricter standard" mentioned in *Shapiro.* Indeed, one member of this court compared the right to interstate travel to that of association, terming it "a virtually unconditional right." See the concurring opinion of Mr. Justice Stewart in *Shapiro v. Thompson,* 394 U.S. at 643.

Today the social and economic circumstances of many people have made a driver's license a necessity. Petitioner's dilemma is typical. If deprived of his automobile, he will find it impossible to continue his work as a rural minister. Without the use of his automobile, petitioner's right to travel will be severely curtailed. For others, the wide-spread ownership of automobiles has resulted in an "urban sprawl" which has in turn caused a decline in every major form of mass transportation.[4]

C. THE STATE INTEREST–IMAGINED AND REAL

We recognize that the individual's right to the use of his property, his right of liberty and of interstate travel are not without limit. These individual rights must be balanced against society's need for safe highways. This Court has weighed these conflicting interests previously in passing on the constitutionality of financial responsibility acts similar to the Georgia Act under consideration here. In *Ex Parte Poresky,* 290 U.S. 30 (1933) the Court upheld a statutory scheme requiring compulsory liability insurance of all who sought driver's licenses. *Reitz v. Mealey,* 314 U.S. 33 (1941), *Kesler v. Department of Public Safety,* 369 U.S. 153 (1962) and *Perez v. Campbell,* 421 F.2d 619 (9th Cir. 1970), *cert. gr.* 39 U.S.L.W. 3206 (1970) (decision pending) considered the validity of state laws which withheld driving

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[4]Since 1945 the total use of mass transit has declined by nearly 64 percent, while the increase in overall route-miles of mass transit has been only 5 percent. Scientific American, CITIES, (New York: Alfred A. Knopf, 1966) at p. 139 ff.

privileges from those who, although adjudicated responsible for accident damages, had obtained release from such judgments through bankruptcy. In approving these statutes, *Reitz v. Mealey* and *Kessler v. Department of Public Safety* held they promoted public safety without interferring with the purpose of the federal Bankruptcy Act.

Petitioner does not question or need to question these decisions. They do not apply here. A state may use its police power to limit the individual's right to drive only if it does so in the interest of public safety. The Georgia Act restricts individual rights to property, liberty and interstate travel *without* advancing public safety, despite the stated purpose of the Act.[5]

The facts in the present case demonstrate this. Unless he posts bond in the amount of $1,057.50[6], the full amount of damages claimed, petitioner will lose the use of his driver's license and automobile for three years.[7] Because Bell cannot afford this bond, he must settle; economic necessity demands that he have the use of a car in order to keep his job. In so doing, petitioner will surrender his right to defend against what has already been judicially determined a frivolous damage claim.

Petitioner's situation is not unique. Although the Georgia Safety Responsibility Act provides for suspension of the license of the owner of a vehicle involved in an accident as well as the driver, Georgia tort law recognizes wide exceptions to an owner's vicarious liability. Unless an owner

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[5] As respondent has noted (Brief For The Respondent In Opposition, p. 19) the Act's purpose appears in its title: "An Act to eliminate the reckless and irresponsible driver of motor vehicles from the highways of the State of Georgia; . . .", Ga. Code Ann. 92A-601.

[6] Although originally $5,000.00, bond was subsequently reduced to $1,057.50 for reasons not reflected by the record in the administrative proceeding or trial court. But, the parties stipulated this as the amount of the injured child's medical expenses. Appendix, p. 17.

[7] See Footnote 2, *supra* at p. 7.

comes within three exceptions to the Georgia rule against owner vicarious liability[8], he cannot be found legally liable for damages caused by his vehicle while operated by another person. Nevertheless, because his driver's license and the registration and license plates of his auto can be suspended, the fact that he is not legally responsible for the damages offers little help. Whether *vel non* one agrees with the Georgia rule against owner vicarious liability, certainly all owners should be treated equally. No rational policy is promoted by requiring some but not all nonliable owners to pay for the damage caused by their borrowed vehicles.

If Georgia were in earnest about protecting its driving public from the effects of accidents caused by reckless, financially irresponsible drivers, it could have initiated a system of compulsory liability insurance as upheld in *Ex Parte Poresky, supra.* But because Georgia might have required *all* drivers to have liability insurance or to post security prior to licensing does not mean that it may take the seemingly lesser step of allowing vehicles to be operated without such protection until an accident occurs, only then suspending licenses if security is not forthcoming. See the dissenting opinion of Judge Friendly in *Latham v. Tynan,* ___F. 2d ___, No. 34668 (2nd Cir. December 16, 1970):

> . . . It is argued that if Connecticut could thus have barred its roads altogether to persons not assuring in advance that at least some payment would be made for injuries inflicted by automobiles owned or operated by them, it can take the seemingly less onerous

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[8]See *Younge v. Kickliter,* 213 Ga. 42, at 43 (1957) stating that an owner may be held liable only if (a) the family purpose doctrine applies, (b) the automobile is used for his benefit by an agent, or (c) he lends the car negligently. Plaintiffs in both *Roberts v. Burson,* ___ F. Supp. ___, No. 12588 (N.D. Ga. September 15, 1969) and *Chappell v. Department of Public Safety,* ___ F. Supp. ___ (N.D. Ga. 1970), appeal docketed, No. 6171, O.T., 1970, made just this argument—that they could not be held legally responsible in a court of law, yet were subject to the pressures of license suspension under the Act.

> step of allowing motor vehicles to be operated without any such protection until an accident occurs and then suspend the license of the operator and all registrations of the owner unless security is filed.
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> . . . However valid the axiom "the greater includes the lesser" may be in mathematics, *Frost v. Railroad Comm'n*, 271 U.S. 583 (1926), and its numerous progeny, including *Shapiro v. Thompson*, 394 U.S. 618 (1969), have demonstrated it to be an exceedingly unsure guide in constitutional law. Connecticut's Motor Vehicle Financial Responsibilty Act raises questions under both the equal protection and the due process clauses of the Fourteenth Amendmend that a compulsory liability insurance statute does not. (Slip Op. at 850 ff.)

The operation of the Act does not serve its stated purposes. In *Reitz v. Mealey*, *supra*, and *Kesler v. Department of Public Safety*, *supra*, a different law was considered. That law, present also in the Georgia Act as Ga. Code Ann. 92A-605(a), provided for license suspension only where a driver had (a) been found responsible for accident damages and (b) refused to reimburse the injured party, attempting to obtain a release from his obligation by use of the federal Bankruptcy laws. This system serves the stated purposes of the Georgia Act by singling out drivers who are both reckless and financially irresponsible and denying them further use of the state's highways.

But petitioner has not been found either reckless or financially irresponsible by any agency or court. The fact of involvement in an auto accident alone is not proof of negligence. The inability to post bond set by the complaining party is inadequate proof that the driver either could not or would not reimburse an injured party once his legal liability were established by a court of law.

One out of every four drivers is likely to be involved in an auto accident each year.[9] This suggests that involvement in an accident is arbitrary and unpredictable. No one could predict that a five-year old child would ride her bicycle through a stop sign and into the path of petitioner's oncoming vehicle. And it was "chance" that petitioner became subject to the operation of the Act even *after* his accident, since the Act operates not automatically, but only where a private party initiates its operation by filing an affidavit. An Act which operates so arbitrarily as to affect only a portion of those persons involved in accidents without a showing of probable or possible negligence does not promote safe highways.

The total lack of review of even the most frivolous damage claims is the result, not of the Act itself, but of judicial interpretation. The Act's broad provision for administrative and judicial hearings [Ga. Code Ann. 92A-602] does not specify what shall be considered. The opinion of the Georgia Court of Appeals in the present case, *Burson v. Bell, supra,* excluded any consideration of fault or liability. Administrative hearings and judicial appeal are therefore limited to technical considerations: whether the accident occurred, whether there was insurance of any kind [Ga. Code Ann. 92A-605(c)], whether the exceptions as to parked vehicles or vehicles used without the owner's permission [Ga. Code Ann. 92A-606] apply, and the amount of damages. This last consideration is limited by the inability of the Director of Public Safety to lower the bond beneath the amount claimed by the party alleging injury [Ga. Code Ann. 92A-610, as amended by Ga. Laws 1964, pp. 225, 230].

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[9]In 1968 an approximate 14,600,000 accidents involved 26,000,000 of the 105,000,000 licensed drivers in the United States at that time. "Traffic Accident Facts," National Safety Council, 425 N. Michigan Ave., Chicago, 1969.

D. THE DUE PROCESS DECISIONS OF THIS COURT

The ruling of the court below is incorrect in view of recent decisions of this court touching on the question of due process. In *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and in *Goldberg v. Kelly*, 397 U.S. 254 (1970) this Court found improper the withholding of wages and welfare benefits pending subsequent due process review. The lack of due process in petitioner's case is more flagrant: he has no opportunity for a meaningful hearing either before or after suspension. In *Sniadach*, Wisconsin law provided that a defendant might move immediately to quash a garnishment in order to correct any potential abuse of process. See the dissenting opinion of Mr. Justice Black, 395 U.S. at 346 and *Family Finance Corp. v. Sniadach*, 37 Wis. 2d 163, 173-74, 154 N.W. 2d 259, 265 (1967). In *Goldberg*, where welfare benefits were at stake, review was again possible after suspension. Indeed the New York welfare procedures in *Goldberg* also provided for a pre-suspension hearing and this court considered not only whether that hearing was necessary, but also what it must include. 397 U.S. at 257.

The interests at stake here are as significant as those in *Sniadach* and *Goldberg*. In *Sniadach*, this court protected the individual's wages from a taking without a proper hearing. Petitioner now asks that his right to drive and use a car necessary to his employment receive the same due process protections.

There is no countervailing state interest which can justify suspending petitioner's driver's license without due process. It has been demonstrated above that the Georgia Safety Responsibility Act does not operate to promote public safety, despite its protestations to the contrary; rather, it serves to pressure uninsured and innocent motorists into settling frivolous claims for which they have no legal obligation simply because they cannot afford to post bond. In his dissenting opinion in *Latham v. Tynan, supra*, Judge Friendly said:

> The . . . statute requires security to be posted by an uninsured careful driver who has been the unfortunate victim of another's fault or of unavoidable accident, whereas the uninsured careless driver is placed under no such burden so long as his luck holds. The discrimination can hardly be justified in terms of keeping uninsured careless drivers off the roads, since by hypothesis the second driver is more likely to cause a liability-producing accident than the first. *The prime justification must therefore lie in providing the first driver to provide a fund that may or may not be needed to compensate for the accident that has occurred*, . . . at 851 (emphasis added).

Whether or not Georgia's protection of a potential creditor's possible future claim is valid, it does not outweigh the individual rights to property, liberty and interstate travel at stake here, *Sniadach v. Family Finance Corp., supra*, The Court has seldom upheld such complete *ex parte* action on the part of a state as that faced by petitioner here. The assertion of the other party as to an uninsured's liability is quite beyond administrative or judicial review. See *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908) (where summary seizure and destruction of food reasonably suspected to be contaminated was upheld); *Yakus v. United States*, 321 U.S. 414 (1944) with its companion case of *Bowles v. Willingham*, 321 U.S. 503 (1944) (where summary price and rent regulations were upheld under the Emergency Price Control Act of 1942 in order to prevent wartime inflation); *Fahey v. Mallonee*, 332 U.S. 245 (1947) (where a conservator was allowed to take summary action in order to preserve the delicate nature of the institution); and *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950) (again allowing summary seizure of mislabeled food by the Food and Drug Administration).

Protection of the potential creditor does not need such summary action. For the means to afford the creditor protection—license suspension—will continue to exist. Unlike the creditor in *Sniadach*, the creditor under the Georgia Act

need have no fear that his debtor can escape the Act's operation by removing himself from the state. The Georgia Act, like those in effect in nearly every other state, includes reciprocity to insure that suspension effective in one state will also be effective in any other [Ga. Code Ann. 92A-609]. The balancing test of *Sniadach* and *Goldberg*, when applied to the present case, requires a reversal of the holding of the court below.

E. OTHER STATES HAVE SATISFIED PUBLIC SAFETY AND DUE PROCESS

Georgia's Safety Responsibility Act is not unusual. Without exception the states have enacted legislation to deal with the problem of damages resulting from highway automobile accidents.[10] All acts include hearing provisions and some are similar to the Georgia Act, prohibiting any consideration of liability and fault in the review process. Some, like Connecticut [Conn. Gen. Stat. Rev. 14-114(a)], do so explicitly. Others do so through judicial interpretation. But many of the acts include "escape provisions" to soften the effect of their failure to examine liability. Two states have hardship provisions allowing limited reinstatement of drivers' licenses if necessary for work or livelihood.[11] Others allow discretionary reduction in the amount of bond if the initial amount can be shown excessive, or for other "good cause."[12]

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[10] See the discussion by Mr. Justice Frankfurter of the history of these acts in *Kesler v. Department of Public Safety*, 369 U.S. 153, 160 (1962).

[11] See Dela. § 21-2921 and the 1953 amendment thereto, and Mich. Stat. Ann. § 9.2204(1).

[12] Alaska § 28.20.270; Ark. § 75-1437; Dela. § 21-2923; Idaho § 49-1509(b); Iowa § 321A.9(1) and (2); Kan. § 8-734; Ky. § 187.370 (2); La. § 32-876; Md. § 66½ 7-214; Minn. § 170.29; Mont. Chap. 4 § 53-426; Nev. § 15 Ch. 485.250; Neb. R.R.S. § 60-513; N.J. Stat. Ann. § 39:6-29; N.M. Stat. Ann. § 64-24-58; N. Dak. C.C. Ann. § 39-16-09; Ohio § 4509.14; Okla. § 7-214; Ore. Rev. Stat. § 486.141; Penn. Stat. Ann. § 75-1409; R.I. § 31-31-5(2); S. Car. § 46-730; S.

Since the enactment of these financial responsibility laws, beginning in the 1930's, their constitutionality has been under attack, largely in state courts. The majority of state court decisions, prior to recent decisions on due process by this Court, have upheld the state acts. Many of these decisions are premised upon the "right-privilege" distinction laid to rest by this Court in *Shapiro v. Thompson*, 394 U.S. at 627, n. 6. See, *e.g.*, *Larr v. Dignan, Secretary of State*, 317 Mich. 12, 26 N.W. 2d 872, 874 (1947); *State v. Stehlek*, 262 Wis. 642, 56 N.W.2d 514, 516 (1953); *Agee v. Kansas Highway Commission Motor Vehicle Dept.*, 198 Kan. 173, 422 P.2d 949, 955 (1967) and the cases cited therein. These decisions, therefore, afford little help in the present case.

More recently, however, a change can be seen. Several state courts have interpreted the hearing provisions of their respective financial responsibility acts to allow for a consideration of liability, in order to bring the acts into line with due process requirements.

The earliest such decision is *Escobedo v. State Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P.2d 1 (1950) (*en banc*). The *Escobedo* decision merits close examination, for many subsequent cases have misread it and thus improperly relied upon it. At issue in *Escobedo* was the question of whether due process was satisfied by a hearing *after* suspension, or whether a pre-suspension hearing was necessary. That court assumed that, regardless of *when* the hearing occurred, it would include a consideration of fault and liability:

Dak. § 32-35-12; Tex. Ann. Civ. St. § 6701h-9; Utah Code Ann. § 41-12-10; W. Va. Code Ann. § 17D-310; Wisc. § 85-09(6); Wash. § 46 29.190.

> The statute did not require security of every operator who might be involved in an accident, but only of those against whom, in the opinion of the department, a judgment might be recovered. Inasmuch as the recovery of a judgment depends, in theory at least, upon culpability, it would seem that the statute, presumptively properly administered, is not open to the objection that under it the nonculpable were subject to arbitrary discrimination. 222 P.2d at 6.

The court held that a hearing after suspension was sufficient, although two dissenting members of the court were satisfied only with a pre-suspension hearing.

The assumption of the *Escobedo* court that the department would take culpability into account proved false and the California Supreme Court again found it necessary to review its act in order to make explicit the requirement that fault and potential liablility must be the basis of the department's decision to suspend a driver's license. *Orr v. Superior Court,* 77 Cal. Rptr. 816, 454 P.2d 712 (1969). This administrative action, based on a finding of potential culpability, would then be subject to later court review. Petitioner seeks no more than this in the present case.

Relying on the *Escobedo* case, the Arizona Supreme Court interpreted its act to require pre-suspension hearings to determine reasonable possibility of a damage judgment in *Schechter v. Killingsworth,* 93 Ariz. 273, 380 P.2d 136 (1963). Thus, since 1963 the Arizona Highway Department has been granting hearings before suspension to those persons so requesting. At these hearings a determination of "reasonable possibility of a judgment being rendered against the petitioner as a result of this accident" is made.[13] The effectiveness of these hearings is clear. Roughly 700 hearings were granted annually between 1963 and 1969,

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[13]See the June 3, 1969 letter of Mr. John H. Beydler, Supervisor, Financial Responsibility Service, Arizona Highway Department, Motor Vehicle Division to counsel, at p. 12a, *infra.*

while only 8 appeals were taken from the decision of the hearing officer to the appropriate state court.[14]

Similar interpretations of state financial responsibility acts have been used to avoid the charge of unconstitutionality in both New Jersey and Utah. See *Williams v. Sills*, 55 N.J. 178, 260 A.2d 505 (1970) and *Hague v. Utah Department of Public Safety*, 23 Utah 2d. 299, 462 P.2d 418 (1969).

These courts have been unimpressed by respondent's argument (Brief of the Respondent in Opposition, p. 23) that an administrative agency lacks the ability to determine the reasonable possibility of judgment because of the complex legal judgments and the need for extensive facts and evidence involved. The court in *Escobedo, supra*, effectively disposed of this objection, saying:

> The facts and legal principles governing the recovery of judgments for damages are a matter of public knowledge and provide a reasonable sufficiently certain standard to be followed by the department. 222 P.2d at 6.

The actual experience of the Arizona Highway Department provides proof that an administrative agency can accurately determine possible liability. The fact that such an administrative determination is subject to judicial review under Georgia's Act [Ga. Code Ann. 92A-602] makes remote the difficulties suggested by respondent.

Not all state courts have chosen to save their acts from constitutional infirmity through judicial interpretation. Colorado's analogue to the portions of the Georgia Act attacked here was held unconstitutional in *People v. Nothaus*, 147 Colo. 210, 363 P.2d 180 (1961). That court was unimpressed by the argument that the Colorado act promoted public safety:

> It [the act] is a device designated and intended to bring about the posting of security for the payment of a private obligation without the slightest indica-

[14] *Id.* at p. 13a, *infra*.

> tion that any legal obligation exists on the part of any person. The public gets no protection whatever from the deposit of such security. This is not the situation which we find in some states where the statutes require public liability insurance as a condition to be met *before a driver's license will issue.* Such statute protects the public. 363 P.2d at 183 (Emphasis by the court).

See also *State v. Kouni,* 58 Idaho 493, 76 P.2d 917 (1938) holding a similar state act in conflict with state and federal due process guarantees.

F. NUMEROUS FEDERAL COURTS HAVE CONSIDERED THE QUESTION PRESENTED FOR DECISION HERE.

Although Federal courts have considered cases similar to that of petitioner, the earliest decision on the exact point presented here occurred in *Llamas v. Department of Transportation,* ___, F. Supp. ___, No. 68-C-154 (E.D. Wisc. January 3, 1969). A three-judge court there dismissed the contention that the Wisconsin procedure, providing no hearing on fault or liability, violated due process. Subsequent changes in the law relied upon by *Llamas* have made it less valuable as precedent.

The *Llamas* court premised its decision on several state cases which had held financial responsibility acts constitutional on the grounds that a driver's license is a privilege rather than a right. See, *State v. Stehlek, supra* and *Larr v. Dignan, Secretary of State, supra.* Such a distinction is no longer valid. See, *Shapiro v. Thompson, supra.*

Secondly, the *Llamas* decision relied upon an improper reading of *Escobedo v. State Department of Motor Vehicles, supra. Llamas* cited *Escobedo* for the proposition that due process was satisfied by a post-suspension hearing in which fault and liability were not considered. This is not the teaching of *Escobedo.* See, *Orr v. Superior Court, supra.*

Finally, the *Llamas* decision occurred before this Court's decisions in *Sniadach v. Family Finance Corp., supra,* and

Goldberg v. Kelly, supra. Thus the court was able to hold that fiscal considerations alone were sufficient to justify the state in limiting the important rights at stake here:

> The legislature had a right to consider that such hearings would not only be time-consuming, but that the cost thereof would be exceedingly large. (Slip Op., p. 6)

Despite the fact that the decisions of this Court in *Shapiro v. Thompson, supra; Sniadach v. Family Finance Corp., supra;* and *Goldberg v. Kelly, supra,* necessitate a reconsideration of the result reached in *Llamas v. Department of Transportation, supra,* it has been cited with favor by other district courts in passing on the constitutionality of similar state safety responsibility acts.

The Georgia Act challenged here has twice been held constitutional by a three-judge district court. See *Roberts v. Burson,* ___ F. Supp. ___ No. 12588 (N.D.Ga. September 15, 1969) and *Chappell v. Department of Public Safety,* ___ F. Supp. ___ (N.D. Ga. August 17, 1970), appeal docketed, No. 6171, O.T. 1970, which appear as Appendix "D" and "E" respectively to respondent's Brief In Opposition. A two judge majority in both cases found the Georgia Act's *ex parte* suspension justified under the line of cases noted in *Goldberg v. Kelly, supra,* as an exception to the usual rule. See the discussion *supra* at pp. 14-16.

Nevertheless, one member of the *Chappell* court dissented and found a violation of due process and equal protection in the Act's suspension without a hearing:

> Under these circumstances [the facts of the present case as set forth in *Burson v. Bell, supra*] the probable effect is that the driver will be out of employment and that he and his family will be on welfare, although his only fault was his failure to obtain a liability policy at the time he obtained his license, a thing which no authority instructed him he must do . . . The writer cannot conceive of the legality of a situation wherein a driver's license is

revoked, when it appears his negligence did not contribute to the claimant's injuries. (Dissenting Opinion of Senior Judge Hooper, Slip Op., p. 4).

Most recently the Connecticut version of the Georgia Act was upheld by a two-judge majority in *Latham v. Tynan*, ___ F.2d ___, No. 34688 (2nd Cir. December 16, 1970).[15] The court approved the lower court's refusal to convene a three-judge court for lack of a substantial federal question, as required by 28 U.S.C. §§ 2281 and 2284.[16] However, the majority opinion did not stop here, but went further to reach the merits of the case as well, and in so doing determined that the Connecticut act was constitutional, citing *Kesler v. Department of Public Safety, supra*, and *Escobedo v. State Department of Motor Vehicles, supra*. These cases cannot support the result reached in *Latham*. See the discussion thereof *supra* at p. 12 ff. and p. 17 ff. respectively.

The correct analysis appears in Judge Friendly's dissenting opinion in *Latham v. Tynan, supra*. The dissent finds the questions posed substantial and makes three points which

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[15]While similar to the Georgia Act, the Connecticut act differs in at least two fundamental respects. Section 14-117 of the Connecticut General Statutes requires the Commissioner to suspend the license of *every* driver who fails to post security. However, a wider range of exceptions than those of the Georgia Act was present, including exceptions where the other driver has been convicted of negligent homicide, manslaughter, reckless driving, driving under the influence and other statutory vehicular misconduct. [Conn. Gen. Stat. Rev. 14-119]. See the opinion of the lower court in *Perez v. Tynan*, 307 F. Supp. 1235, 1237 (D. Conn., 1969).

[16]See also *Pollion v. Powell*, 47 F.R.D. 331 (N.D. Ill. 1969) (holding that the question presented here is substantial and warranted convening a three-judge court); *Cheek v. Washington*, 311 F.Supp. 965 (D.D.C. 1970) (holding no substantial federal question, but relying on *Lee v. England*, 206 F.Supp. 957 (D.D.C. 1962), which treated suspension after a discharge in bankruptcy); and *Gaytan v. Cassidy*, 317 F. Supp. 46 (W.D. Tex. 1970) appeal docketed, No. 495, O.T. 1970, 39 U.S. L.W. 3067 (where a three-judge court found no substantial federal question, although recognizing that a split of opinion existed).

apply with equal force here. *First*, the purpose of the Connecticut Safety Responsibility Act is not safety, but rather that of "prodding the first driver to provide a fund that may or may not be needed to compensate for the accident that has occurred . . .," Slip Op. at p. 851. This view finds support elsewhere in *Miller v. Anckaitis*, ___ F.2d ___, No. 18379 (3rd Cir. December 7, 1970) cert. filed, *sub nom. Anckaitis v. Miller*, No. 1309, O.T. 1970, where, in dealing with a different problem raised by the Pennsylvania Safety Responsibility Provisions, Pa. Stat. Ann. Tit. 75, § 1414 (1960), the court said of the act's purpose:

> But any driver knows that neither type of statute [e.g. compulsory liability statute and the type of statute considered here] bears any meaningful relationship to his driving habits or the protection of life and limb. Both are devices adopted to spread the risk of the statistically predictable and inevitable number of injuries resulting from motor vehicle operation.
>
> Even accepting the fiction that, as applied to drivers, motor vehicle responsibility statutes are intended to promote safety, it is just too much fiction to contend that, applied to a judgment debtor held vicariously liable for the omission of a subagent, the statute is anything but a means for the enforcement of judgments. (Slip Op. at p. 6)

Second, Judge Friendly notes that the act confers a power upon the "prospective plaintiff to force an unjust settlement upon an owner or operator who is obliged by economic necessity to keep his car on the road" and is "reminiscent of what the Supreme Court found constitutionally offensive in *Sniadach v. Family Finance Corp.*, [citation omitted]," Slip Op. at p. 852.

Third, there is so total a lack of review possible under the Connecticut act that one of two things must be true if the rule expressed in *Sniadach* is not to apply here as well. Either the interests protected by the Connecticut statute are "much stronger" than those protected by the Wisconsin garnishment statute in *Sniadach*, *or* the interests

impaired by the Connecticut statute are "much weaker" than those impaired in *Sniadach*, Id. at p. 853.

The empirical truth of Judge Friendly's observations in *Latham v. Tynan, supra,* are borne out by the facts in petitioner's case. Indeed, the facts in the present case present the strongest argument for reversing the lower court's holding. What possible good can result from depriving a man of his car, the means of his livelihood, when he has in no way shown himself an unfit driver and has specifically been found not responsible for the one accident in which he was involved? What possible good can result from allowing another private citizen to use license suspension as a means of revenge against another private citizen? In fact there is no other purpose that can be served, for petitioner has never been sued for the damages resulting from his accident and the Georgia two year statute of limitations for torts involving personal injury [Ga. Code Ann. 3-1004] has now run. If the decision of the court below is allowed to stand, petitioner will lose his driver's license and the use of his car for three years for failure to post a damage bond for an accident for which he can no longer be sued. Justice demands and due process requires that petitioner be able to make use of the trial court's finding of no liability to prevent the Georgia Safety Responsibility Act from causing him irreparable damage, while furthering no worthwhile end.

CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed and Ga. Code Ann. 92A-605, 606, 607, 610 and 615.1 declared unconstitutional and their ap-

plication enjoined insofar as they operate to allow license suspension without a constitutionally adequate hearing procedure.

Respectfully submitted,

Howard Moore, Jr.
Peter E. Rindskopf
Suite 1154
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303

William H. Traylor
Elizabeth Roediger Rindskopf
551 Forrest Road, N.E.
Atlanta, Georgia 30312

Attorneys for Petitioner

APPENDIX

STATUTORY PROVISIONS INVOLVED

Georgia Code Annotated, §§92A-605, 606, 607, 610, and 615.1 of The Motor Vehicle Safety Responsibility Act:

"**92A-605.** Filing of security by persons involved in accidents; effect of liability insurance; other exceptions; suspension of license for failure to comply with section; bond as proof of financial responsibility; surety requirements; judgments; non-payment, reporting of; suspensions; payments; copies; court record; pending action; unsatisfied judgment; certificate by clerk.

(a) Security and financial responsibility required unless evidence of insurance—when security determined—suspension—exceptions—Not less than 30 days after receipt by him of the report or notice of an accident which has resulted in bodily injury or death, or in damage to the property of any one person to an extent of $100.00 or more, the Director shall suspend the license and all registration certificates and all registration plates of the operator and owner of any motor in any manner involved in the accident unless or until the operator or owner has previously furnished or immediately furnishes security, sufficient in the judgment of the Director to satisfy any judgments for damages or injuries resulting from the accident as may be recovered against the operator or owner by or on behalf of any person aggrieved or his legal representative, but in no event in any amount less than the combined amount of damages, for both personal and property injury, sworn to in the report or notice of the accident filed by the aggrieved party, and unless such operator or owner shall give proof of financial responsibility for the future as is required in section 92A-615.1. If the operator or owner is a nonresident, the suspension shall apply to the privilege of operation or use of motor vehicles within this State. The Director shall not apply the provisions of this section against a resident of this State involved in an accident with a nonresident of this State when the damage is less than $300.00 except upon the

written request of any party in interest. An adjudication or discharge in bankruptcy shall not relieve the operator or owner from furnishing security as provided herein or from the other provisions of this Chapter.

(b) Notice of suspension.–The notice of suspension shall be sent by the Director to the operator and owner not less than 10 days prior to the effective date of such suspension and shall state the amount required as security, and the requirements as to future proof of financial responsibility. Where erroneous information is given the Director with respect to the matters set forth in subdivision 1, 2 or 3, subsection (c) of this section, he shall take appropriate action as hereinbefore provided, after receipt by him of correct information with respect to said matters.

(c) Exceptions.–This section shall not apply under the conditions stated in Section 92A-606 nor:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him, which provided him with liability coverage in the operation of the motor vehicle involved in such accident.

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Director, covered by any other form of liability insurance policy or bond; nor

4. To any person qualifying as a self-insurer under section 92A-616, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section unless issued by any insurance company or surety company authorized to do business in this State; except that if such motor vehicle was not registered in this State; or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or

bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company, if not authorized to do business in this State shall execute a power of attorney authorizing the Director to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident: Provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than $10,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than $20,000 because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than $5,000 because of injury to or destruction of property of others in any one accident.

(d) Bond as proof of financial responsibility may be shown by a surety bond executed by the person giving proof and by a surety company duly authorized to transact business in this State or by the person giving proof of his ownership of real property and by one or more individual sureties owning real property within this State and having an equity therein in at least the amount of the bond, except that a real property bond cannot be filed in connection with the revocation of an operator's license or operating privilege. The Director may not accept any real property bond unless the real property is scheduled in an affidavit attached thereto setting forth a description of such property and the title thereto, including any liens and encumbrances and amounts thereof, market value of such sureties' interest therein, executed by the owner or owners of such interest and such bond and affidavit shows thereon that a duplicate original of such bond and affidavit has been recorded in the office of the clerk of the superior court where deeds are admitted to record in the county where the real property is located. The clerk shall provide a separate book for such purpose.

The bond shall be approved by the clerk in the same manner as a supersedeas bond is approved. The fee of the clerk for recording and approving of such affidavit and bond shall be $2.50.

(2) The Director shall not accept any such bond unless it is conditioned for payments in amounts requested by the Director subject to the maximum amounts of security as specified under the provisions of this Chapter.

(3) No such bond shall be cancelled unless 20 days prior written notice of cancellation is given the Director and cancellation of the bond shall not prevent recovery thereon with respect to any cause of action which necessitated the filing of such bond.

(4) A bond with individual sureties shall constitute a lien upon the real property of the principal and any individual surety in favor of the Governor of Georgia for the use of any holder of any final judgment, arising out of the cause of action which necessitated the filing of the bond, against the principal on account of damage to property or injury to or death of any person or persons, upon the recording of the bond in the office of the clerk of the court where deeds are admitted to record in the county where the real property is located.

(5) When a bond with individual sureties filed with the Director is no longer required under this Chapter, the Director shall, upon request cancel it as to liability for damage to property or injury to or death of any person or persons and when a bond has been cancelled by the Director he shall upon request furnish a certificate of the cancellation with the seal of the department thereon. The certificate, notwithstanding any other provisions of law, may be recorded in the office of the clerk of the court in which the bond was admitted to record.

(6) When the certificate of cancellation with the seal of the department thereon has been filed in the office of the clerk of the superior court in which the bond was admitted to record, and when there are no claims or judgments against the principal in the bond on account of

damage to property or injury to or death of any person or persons resulting from the ownership or operation of a motor vehicle by the principal arising out of the clerk of the superior court of the county in which the bond was admitted to record shall thereupon record the said certificate of cancellation which shall discharge the lien of the bond on the real property of the sureties. The cost of such recording shall be upon said sureties.

(7) If a final judgment rendered against the principal on the bond filed with the Director is not satisifed within 30 days after its rendition, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action on the bond in the name of the State against the company or persons issuing the bond.

(8) When the sureties on the bond are individuals the judgment creditor may proceed against any or all parties to the bond at law for a judgment or in equity for a decree and foreclosure of the lien on the real property of the sureties. The proceeding whether at law or in equity may be against one, all or any intermediate number of parties to the bond and when less than all are joined other or others may be impleaded in the same proceeding and after final judgment or decree other proceeding may be instituted until full satisfaction is obtained.

(e) Judgments; nonpayment, reporting of; suspensions; payments; copies.–(1) Whenever any person fails within 30 days to satisfy any judgment rendered in an action at law arising out of a motor vehicle accident, to which no appeal has been entered or motion for new trial filed, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered, to forward to the Director immediately after the expiration of said 30 days, a certified copy of such judgment and the clerk or the judge, as the case may be, shall be entitled to a fee of $1 for such services which shall be included as a part of the cost of said action at law. If the defendant named in any certified copy of a judgment reported to the Director is a nonresident, the Director shall transmit a

certification of the judgment to the official in charge of the issuance of licenses and registration certificates of the State of which the defendant is a resident.

(2) (a) The Director upon the receipt of a certified copy of such judgment, shall forthwith suspend the license and registration or nonresident's operating privilege of the person against whom such judgment was rendered, except as otherwise provided in this Chapter.

(b) If the judgment creditor consents in writing, in such forms as the Director may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Director, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof as provided in this Chapter.

(3) Such license and registration or nonresident's operating privilege shall remain so suspended and shall not be renewed nor shall any license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until such judgment is stayed, satisifed in full or to the extent hereinafter provided, subject to the exceptions provided in this Chapter.

(4) Judgments herein referred to shall, for the purpose of this Chapter only, be deemed satisfied:

(a) When $10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(b) When subject to such limit of $10,000 because of bodily injury to or death of one person, the sum of $20,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) When $5,000 has been credited upon any judgment or judgments rendered in excess of the amount

because of injury to or destruction of property of others as a result of any one accident: Provided, however, payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for herein.

(5) (a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Director shall not suspend the license and registration or nonresident's operating privilege following nonpayment of a judgment, when the judgment debtor obtains such an order permitting the payment of such judgments in installments, and while the payment of any said installments is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Director shall forthwith suspend the license and registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this Chapter.

(d) Court record; pending action; unsatisfied judgment; certificate by clerk.—At the expiration of one year from the date of the accident or one year from the date of the suspension under the provisions of this Chapter the clerk, or the judge if there is no clerk, of the several courts of this State having jurisdiction over civil cases shall upon request of an operator or owner or an authorized representative of either, check the records of such court and furnish said operator or owner or authorized representative with a certificate showing whether or not there is an action at law pending or an unsatisfied judgment on file against the said operator or owner arising out of the accident which necessitated the posting of bond or security or on which the suspension was based. The cost of such certificate shall be $1 and

shall be paid by the party requesting same. (Acts 1951, pp. 565, 568; 1956, p. 543; 1957, pp. 124, 125; 1958, p. 694; 1959, p. 341; 1963, pp. 593, 594-595; 1954, pp. 225, 227; 1969, pp. 819, 820.)

92A-606. Further exceptions to requirement of security.—The requirements as to security and suspension in section 92A-605 shall not apply:

1. To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

2. To the operator or the owner of a motor vehicle legally parked at the time of the accident;

3. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission; nor

4. If, prior to the date that the Director would otherwise suspend license and registration or nonresident's operating privilege under section 92A-605, there shall be filed with the Director evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident. (Acts 1951, pp. 565, 570.)

92A-607. Duration of suspension of license or registration.—The license and registration and nonresident's operating privilege suspended as provided in section 92A-605 shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until:

1. Such person shall deposit and file or there shall be deposited and filed on his behalf the security and proof of responsibility required under section 92A-605; or

2. One year shall have elapsed following the date of such suspension and evidence satisfactory to the Director has been filed with him, during such period no action for damages arising out of the accident has been instituted; or

3. Evidence satisfactory to the Director has been filed with him of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision 4 of section 92A-606. Provided, however, in the event there shall be any default in the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the Director shall forthwith suspend the license and registration of nonresident's operating privilege of such person defaulting which shall not be restored unless and until (1) such person deposits and thereafter maintains security as required under section 92A-605 in such amount as the Director may then determine, and such person files proof of financial responsibility for the future as required in section 92A-615.1, or (2) one year shall have elapsed following the date when such security and such proof of financial responsibility was required and during such period no action upon such agreement has been instituted in this State. (Acts 1951, pp. 565, 571; 1963, pp. 593, 596; 1969, pp. 819, 821.)

92A-610. Form and amount of security.—The security required under this Chapter shall be in such form and in such amount as the Director may require, but not in excess of $10,000 where only one person was injured or killed, $20,000 where more than one, nor $5,000 for property damage, nor in any event in an amount less than the combined amount of damages for both personal and property injury sworn to in the report or notice of the accident filed by the aggrieved party as specified in section 92A-605. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Director or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons: Pro-

vided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

The Director may reduce the amount of security ordered in any case but in no event to an amount less than the combined amount of damages for both personal and property injury sworn to in the report or notice of the accident filed by the aggrieved party, within six months after the date of the accident, if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of section 92A-611.

The Director may increase the amount of security in any case but in no event to an amount less than the combined amount of damages for both personal and property injury sworn to in the report or notices of the accident filed by the aggrieved party, within six months after the date of the accident, if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of section 92A-611.

The Director may increase the amount of security in any case where subsequent information indicates that the original amount of security ordered would not be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner. (Acts 1951, pp. 565, 573; 1956, pp. 543, 560; 1957, pp. 124, 128; 1958, pp. 694, 696; 1963, pp. 593, 598; 1964, pp. 225, 230.)

92A-615.1. Duration of future proof of financial responsibility.—In all those situations under this Chapter in which proof of financial responsibility for the future is required, such proof must be maintained for a one-year period:

Provided, however, that the second time any person is required by this Chapter to file proof of financial responsibility then such proof must be maintained for a three-year period. (Acts 1963, pp. 593, 600; 1964, pp. 225, 231.)

Arizona Highway Department Motor Vehicle Division
Phoenix, Arizona 85007
June 3, 1969

Elizabeth Roediger Rindskopf
Managing Attorney
Emory Neighborhood Law Office
551 Forrest Road N.E.
Atlanta, Georgia 30312

Dear Madam:

Your letter of May 29, 1969 addressed to Mr. David H. Campbell, Superintendent of Motor Vehicle Division, has been referred to me for reply.

1. How long has Arizona held hearings on liability *before* license suspension;
   a. The State of Arizona has been holding hearings since March 27, 1963 in accordance with Title 28-1122 of the Arizona Revised Statutes and the Arizona Supreme Court decision, Schecter vs. Killingsworth.
2. What is the procedure in such a hearing (e.g., its length, who officiates);
   a. After request for a hearing is made by the petitioner a date and time is set at the Financial Responsibility office for said hearing. A trained Hearing Officer conducts the hearing. The length of the hearing varies from thirty minutes to two hours depending on the nature and seriousness of the accident. The purpose of the hearing is to determine whether or not, in the opinion of the Hearing Officer, there is a reasonable possibility of a judgment being rendered against the petitioner as a result of this accident. The Hearing Officer has at hand the accident report forms of both the petitioner and the adverse party as well as statements of witnesses, the police report, and all other pertinent data concerning the accident.

If the police report indicates that citations were issued to the petitioner or the adverse party, the Hearing Officer—in the presence of the petitioner—gets the disposition of the citation from the local court and enters the disposition accordingly on the hearing work sheet. The Hearing Officer at that time takes the statements of the petitioner, verbatim, of how the accident occurred and records it on the work sheet and additional paper, if needed. The Hearing Officer is required to have the petitioner sign any additional statements attached to the work sheet. After consulting with the petitioner and his counsel, the Hearing Officer notes on his sheet, whether or not the police diagram is accurate. If it is, he so notes on the work sheet. If the petitioner disagrees with the diagram on the work sheet, the Hearing Officer then asks the petitioner to draw, as best he can, his impression of the accident. On the face side of the hearing work sheet (copy enclosed) the officer then makes any remarks he deems pertinent to making his decision. If the officer determines there may be a reasonable possibility of a judgment, the effective date of the suspension is extended for another ten (10) days from the date of the hearing to allow the petitioner time to get releases or work out agreements with the adverse parties. If the Hearing Officer makes the determination that there is no reasonable possibility of a judgment, he then closes the file by virtue of A.R.S. 28-1122. If the petitioner is aggrieved at the ruling of the Hearing Officer, he is advised he has ten (10) days in which to appeal the decision to the Superior Court for a Trial de Nova. I might add here that only eight (8) appeals have been made from the decisions of the Hearing Officer at Financial Responsibility Service—all eight have been quashed by the courts.

3. How many such hearings have been requested per year since they were first made available;

a. In the three years that hearings have been held at this department we have averaged approximately 700 hearings per year. This number is increasing at a very rapid rate due to attorneys and the general public becoming more cognizant of the fact that this procedure is available to them.

4. Have the hearings been burdensome on the Arizona Highway Department;

a. Up until the past ten or twelve months the hearing process has been relatively easy to manage with one Hearing Officer. However, with the increased request for hearings, I anticipate that an additional two (2) Hearing Officers will be needed by the end of 1969.

5. How many additional staff personnel are needed to provide such hearings;

a. Please refer to No. 4 answer.

6. What additional cost has been caused by the hearings.

a. Until the present time no additional cost has been incurred due to the fact that the Hearing Officer also does evaluations and other chores assigned him in the department. However, in the future I anticipate that additional costs will be incurred as more Hearing Officers will have to be employed at a wage schedule to be determined by the Superintendent.

We find that the provision in the Arizona Revised Statutes providing for these hearings has been most satisfying to persons involved in accidents when no insurance was claimed and there was an obvious liability on the adverse party. We anticipate that our methods of conducting hearings will be adopted by most of the other states in the near future.

We are enclosing a copy of General Order No. 68 (Rules and Regulations governing Hearings) as well as the work sheets used at the hearing for your perusal.

I hope that this information will assist you in your plans for providing for hearings in the State of Georgia. Any

help or assistance that this office can give you will be most gladly delivered upon request.

Yours very truly,

/s/ John H. Beydler, Supervisor
Financial Responsibility Service
